# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## CIVIL REVISION APPLICATION No. 110 of 1994

**For Approval and Signature:**

**THE HON'BLE MISS JUSTICE R.M.DOSHIT**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgement ? |
| 2 | To be referred to the Reporter or not ? |
| 3 | Whether their Lordships wish to see the fair copy of the judgement ? |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ? |
| 5 | Whether it is to be circulated to the civil judge ? |

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**SAVITABEN W/O R G PATEL - Petitioner(s)**

**Versus**

**KALIDAS C PATEL - Respondent(s)**

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**Appearance :**

MR DN PANDYA for Petitioner No(s).: 1.

MR JC SHETH for Respondent No(s).: 1.

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**CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT**

**Date : 17/06/2005**

**ORAL JUDGMENT**

Feeling aggrieved by the judgment and order dated 12th October, 1993 passed by the learned District Judge, Bharuch in Civil Appeal

No.152/1982 the appellants (defendants in Regular Civil Suit No.183/1979) have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "**the Rent Act**").

The suit house situated at village Sachan, Taluka Vadra, District Bharuch was of the ownership of one Bai Zaverben. The suit house was leased to the defendant by the said Bai Zaverben for a monthly rent of Rs.3=00 under the rent note dated 26th April, 1963. Through the testamentary disposition made by the said Bai Zaverben the respondent-plaintiff became the owner of the suit house. Admittedly, at the relevant time the Rent Act was not made applicable to village Sachan. As the defendant was in arrears of rent the plaintiff gave notice as envisaged by Section 106 of the Transfer of Property Act, 1882 and terminated the tenancy of the defendant. The plaintiff instituted Regular Civil Suit No.183/1979 in the Court of Joint Civil Judge (S.D.), Bharuch for recovery of possession of the suit house and of amount of arrears of rent.

Pending the suit, the Government of Gujarat, in exercise of powers conferred by sub-section 3 of Section 2 and sub-section 1-A of Section 6 of the Rent Act, issued Notification dated 26th March, 1980. The said Notification was published in the official gazette of the Government of Gujarat on 3rd April, 1980. By the said Notification, the provisions contained in Part-II of the Rent Act were extended, inter alia, to all the areas of Gram Panchayats of the State of Gujarat. There is no dispute that prior to the said Notification dated 26th March, 1980, the Rent Act did not apply to village Sachan. The Rent Act became applicable to village Sachan and consequently to the suit house from 3rd April, 1980 [the date of the publication of the Notification in the official gazette].

In view of the above referred Notification the defendant did raise the defence that the suit shall be governed by the Rent Act. The learned Civil Judge was, however, of the opinion that the Rent Act would apply from the date of the publication of the Notification i.e. 3rdApril, 1980 and shall have no retrospective operation. The pending suit, therefore, would not be governed by the Rent Act. The learned Civil Judge, by judgment and order dated 18th October, 1982, allowed the suit and passed decree for possession of the suit house and the amount of arrears of rent due. Feeling aggrieved the defendant preferred Civil Appeal No.152/1982 in the Court of District Judge, Bharuch under Section 96(1) CPC. By application Exh.25 the defendant requested the lower appellate court to frame an additional issue in connection with the applicability of the Rent Act to the pending suit. The said application was dismissed by the learned Assistant Judge on 13rd December, 1984. Feeling aggrieved the defendant preferred Civil Revision Application No.265/1985 before this Court. Pending the said Civil Revision Application and the Civil Appeal before the District Court the defendant passed away. His heirs and legal representatives have been substituted as the appellants. The said Civil Revision Application came to be dismissed on 24thSeptember, 1991 (Coram: K.R.Vyas, J.) with a liberty to the defendant to raise the dispute before the lower appellate court and to seek order on merits. The lower appellate court held that the Government Notification extending the Rent Act to village Sachan would apply to the pending suit also. Hence, the Regular Civil Suit No.183/1979 instituted by the plaintiff would be governed by the Rent Act. While answering the question whether the civil court had the jurisdiction to hear and decide the suit, the lower appellate court held that the suit was filed in the Court of Civil Judge (S.D.) at Bharuch. The Civil Judge (S.D.) was also conferred with the powers to decide the matters under the Rent Act. The Civil Court, therefore, had the jurisdiction to hear and decide the

suit. The District Judge, therefore, had the jurisdiction to hear and decide the appeal before it. On merits the lower appellate court confirmed the finding that the defendant was in arrears of rent and that he was liable for eviction as envisaged by Section 12(3)(a) of the Rent Act. The lower appellate court, by its judgment and order dated 12th October, 1993, dismissed the Appeal. Feeling aggrieved, the defendant has preferred the present Revision Application under Section 29(2) of the Rent Act.

I am of the view that the lower appellate court has rightly held that on extension of the Rent Act under Government Notification published on 3rd April, 1980 the Rent Act should apply even to the pending suits. The Regular Civil Suit No.183/1979 then pending before the civil court was, therefore, governed by the Rent Act. The lower appellate court has, however, erred in holding that the civil court having been conferred jurisdiction under the Rent Act also had jurisdiction to hear and decide the civil suit and the lower appellate court had jurisdiction to hear the appeal against the judgment and decree passed by the Civil Court.

Indisputably, the suit for recovery of possession was instituted before the Civil Court under Section 108 of the Transfer of Property Act. Section 28 of the Rent Act provides for jurisdiction of courts to entertain and decide the suit or proceeding between a landlord and a tenant under the Rent Act. It expressly provides that “no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question. This provision has come-up for consideration by this Court and by Hon'ble Supreme Court time and again. It has been consistently held that such pending suits shall be transferred to the court which would have jurisdiction to try such suits or shall be continued in such court, as the case may be.

In the present case, the Civil Suit was instituted in the Court of Civil Judge (S.D.) under ordinary civil jurisdiction. The learned Judge negatived the contention that the suit was governed by the Rent Act and continued the suit under its civil jurisdiction. As the lower appellate court was of the opinion that the suit was governed by the Rent Act, the right course of action was to remand the suit to the trial Court. The trial Court should either transfer the suit to the rent court or may allow amendment of the pleadings and continue as the suit under the Rent Act. In my opinion, the lower appellate court has erred in treating the suit as one under the Rent Act and in deciding the Appeal as though it were an Appeal under Section 29(1) of the Rent Act though it was an Appeal preferred under Section 96(1) CPC.

In view of the above discussion the Revision Application is required to be allowed on the ground of jurisdiction alone. As the suit is required to be remanded to the trial Court I do not deal with the merits of the decree for eviction passed by the lower appellate court.

The Revision Application is allowed. The judgment and order dated 12th October, 1993 passed by the learned District Judge, Bharuch in Civil Appeal No.152/1982 is quashed and set-aside. The Civil Appeal is remanded to the learned District Judge, Bharuch. The learned District Judge, Bharuch shall remand the Regular Civil Suit No.183/1979 to the trial Court with appropriate direction either to transfer the suit to the Rent Court or to allow amendment of the pleadings and to continue the suit as one under the Rent Act. Rule is made absolute to the aforesaid extent. The parties shall bear their own cost. The Registry shall send the writ forthwith.

( Ms. R.M.Doshit, J. )

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